IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 769 of 2001

in

SPECIAL CIVIL APPLICATIONNo 8066 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PATNI RAMESHBHAI RAIBHANBHAI

Appearance:

1. LETTERS PATENT APPEAL No. 769 of 2001

MR NAGESH SUD AGP for Appellant No.

MRS MADHUBEN SHARMA for Respondent No. 1

MR RK MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 18/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant - State of Gujarat and others have filed this Letters Patent Appeal against the judgment and order dated 19.9.2000 passed by the learned Single Judge of this Court (Coram: Mr.Justice S.K.Keshote,J.) in Special Civil Application No.8066/1998, whereby the learned Single Judge allowed the writ petition i.e. Special Civil Application No.8066/1998 filed by the respondent - original petitioner - Patni Rameshbhai Raibhanbhai, and directed the respondent - present appellants to consider his case for giving him regular appointment in the pay scale of Class-IV post from the date of filing of the Special Civil Application. Alongwith this Appeal, Civil Application No.11489/2000 was filed by the appellant - applicant for stay of the judgment and order passed by the learned Single Judge and the Division Bench of this Court, while admitting this Appeal granted stay against the judgment and order passed by the learned Single Judge allowing the writ petition with a direction as stated earlier. It is because of this fact that they have not implemented the judgment and order passed by the learned Single Judge.

#. This matter was placed earlier before this Court prior to Diwali Vacation and having heard learned AGP Mr.Sud and having gone through the judgment and order passed by the learned Single Judge allowing the writ petition, we were prima facie not inclined to interfere with the judgment and order passed by the learned Single Judge allowing the writ petition filed by the respondent - petitioner. However, on the request of the learned AGP Mr. Sud to make definite statement in the matter after obtaining necessary instructions from his client we have kept this matter after Diwali Vacation before 3rd November,2003. On 3rd November, 2003, the learned AGP Mr. Sud stated before us that the State Government had not only accepted but also implemented the judgment and order passed by the learned Single Judge in Special Civil Application No.7556/1996. However, they have decided to challenge the subsequent order passed by the learned Single Judge in Special Civil Application No.8066/1998. When once the State Government accepted the judgment of the learned Single Judge in the earlier writ petition, then there was no question of not accepting the subsequent judgment of the learned Single Judge delivered

in the subsequent petition. Therefore, the matter could have been disposed of without any difficulty by this Court. But, it was brought to our notice that there was interim order passed on Civil Application No.11489/2000 filed in this appeal, and therefore, we vacated the interim relief so as to enable the State Government to comply with the judgment and order passed by the learned Single Judge on 19.9.2000 in Special Civil Application No.8066/1998. Accordingly, while vacating the interim relief, the State Government was directed to comply with the judgment and order dated 19.9.2000 passed by the learned Single Judge in Special Civil Application No.8066/1998 and submit the compliance report before this Court on 17.11.2003. However, yesterday i.e. on 17th November, 2003, learned AGP Mr.Sud wanted one day's time as the order could not be produced before this Court, and therefore, the matter was kept today. Today, the learned AGP has placed on record copy of the order dated 17.11.2002 passed by the Director, Scheduled Caste Welfare, State of Gujarat, Gandhinagar, appointing the petitioner on the post of Chowkidar, Class-IV with effect from 21.9.1998 i.e. the day on which the writ petition came to be filed, in the pay scale of 2550-3200 with certain conditions.

#. In view of above, nothing survives in the appeal and the appeal therefore requires to be dismissed. However, learned counsel Mr. Mishra for the petitioner submitted that the appellants should be directed to pay salary with effect from 21.9.1998 till the date of appointment i.e. 17.11.2003, because the learned Single Judge has ordered to give him regular appointment from the date of filing of the petition within four weeks from the date of receipt of the writ petition's judgment in the petition. The judgment was delivered on 19.9.2000. We are not inclined to accept this submission of Mr.Mishra. While admitting the appeal, the Division Bench of this Court has stayed operation of the order passed by the learned Single Judge. As stated earlier, once the order passed by the learned Single Judge is complied by the appellant then nothing survives in the matter and accordingly it is disposed of with no order as to costs. Respondent petitioner was personally present through his learned counsel, who has been duly served with the appointment order. Copy of the said order is also produced on the record of this case.

(B. J. SHETHNA, J.)

(RAVI R. TRIPATHI, J.)

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